



DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 220420-0100]

Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of modifications.

SUMMARY: This notice modifies the National Institute of Standards and Technology (NIST) Alternative Personnel Management System (APMS) published October 21, 1997 to allow NIST to implement a term appointment with a minimum duration of more than one year that may be extended up to six years, for research positions in the Scientific and Engineering (ZP) career path at the Pay Band III-level and above. These term appointments will be subject to a trial period that lasts the duration of the term (initial appointment including any subsequent extensions).

This notice also modifies the APMS to allow NIST to convert an employee serving under a term appointment under this authority to a permanent appointment in the competitive service without further competition.

DATES: This notice is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For further information, please contact Essex W. Brown III, NIST Office of Human Resources Management, by telephone at (301) 975-3801 or by email at essex.brown@nist.gov.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 99-574, the National Bureau of Standards Authorization Act for Fiscal Year 1987, the Office of Personnel Management (OPM) approved a demonstration project plan, “Alternative Personnel

Management System (APMS) at the National Institute of Standards and Technology (NIST),” and published the plan in the ***Federal Register*** on October 2, 1987 (52 FR 37082). The published demonstration project plan was modified twice, once to clarify certain NIST authorities (54 FR 21331, May 17, 1989) and once to revise the performance appraisal system and the pay administration system in order to better link pay with performance (55 FR 39220, September 25, 1990). The APMS was made permanent in Section 10 of the National Technology Transfer and Advancement Act of 1995, Public Law 104-113, 110 Stat. 775 (Mar. 7, 1996) (codified at 15 U.S.C. 275 note), and the project plan and subsequent amendments were consolidated in the final APMS plan, which was published in the *Federal Register* on October 21, 1997 (62 FR 54604). NIST published ten subsequent amendments to the final APMS plan: one on May 6, 2005 (70 FR 23996), which became effective upon publication in the *Federal Register*; one on July 15, 2008 (73 FR 40500), which became effective on October 1, 2008; one on July 21, 2009 (74 FR 35841), which became effective upon publication in the *Federal Register*; one on January 5, 2011 (76 FR 539), which became effective upon publication in the *Federal Register*; one on June 19, 2012 (77 FR 36485), which became effective upon publication in the *Federal Register*; one on August 13, 2012 (77 FR 48128), which became effective upon publication in the *Federal Register*; one on August 24, 2012 (77 FR 51518), which became effective upon publication in the *Federal Register*; one on September 24, 2015 (80 FR 57580), which became effective upon publication in the *Federal Register*; one on July 21, 2009 (74 FR 35843), which became effective upon publication in the *Federal Register*; and one on April 11, 2019 (84 FR 14654), which became effective upon publication in the *Federal Register*.

The APMS allows for modifications to be made as experience is gained, results are analyzed, and conclusions are reached on how the system is working. Through this notice, NIST recognizes a modification within the APMS plan that allows NIST to:

(a) Implement a term appointment, with a minimum duration of more than one year that may be extended up to six years, for research positions in the Scientific and Engineering (ZP) career path

at the Pay Band III- level and above. These term appointments will be subject to a trial period that lasts the duration of the term (initial appointment including any subsequent extensions).

(b) Convert an employee serving under a term appointment under this authority to a permanent appointment in the competitive service without further competition if all of the following are met -

- (1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;
- (2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;
- (3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service under this authority;
- (4) the employee's performance under such term appointment was at least Contributor level (Level 3) or equivalent; and
- (5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

Conversion to a permanent position is not guaranteed even if the above conditions are met.

Dated:

Del Brockett
Chair, Personnel Management Board

Table of Contents

I. Executive Summary

II. Basis for Recognition of OPM Authorization in the APMS Plan

III. Language Inserted into the APMS Plan

I. Executive Summary

The National Institute of Standards and Technology's (NIST) Alternative Personnel Management System (APMS) is designed to: (1) improve hiring and allow NIST to compete more effectively for high-quality researchers through direct hiring, selective use of higher-entry salaries, and selective use of recruiting allowances; (2) motivate and retain staff through higher pay potential, a pay-for-performance system, more responsive personnel systems, and selective use of retention allowances; (3) strengthen the manager's role in personnel management through delegation of personnel authorities; and (4) increase the efficiency of personnel systems through installation of a simpler and more flexible classification system based on pay banding, through reduction of guidelines, steps, and paperwork in classification, hiring, and other personnel systems, and through automation (52 FR 37082, October 2, 1987). Since implementing the APMS, NIST is more competitive for talent, and NIST managers report significantly more authority to make decisions concerning employee pay.

As provided in this notice, NIST is modifying its APMS to allow NIST to (a) implement a new appointment mechanism that allows NIST to hire individuals on a term appointment, with a minimum duration of more than one year that may be extended up to six years, and (b) convert an employee serving under a term appointment under this authority to a permanent appointment in the competitive service without further competition. These authorizations will provide NIST with greater flexibility to shape the workforce based on research program changes by permitting term appointments of longer duration and authorizing a streamlined way to convert term employees to permanent status. In addition, they will enhance NIST's ability to recruit and retain highly skilled individuals in mission-critical occupations and provide greater opportunities for term employees in pursuing their career objectives.

The positions for which this term appointment will be utilized include research positions within the Scientific and Engineering (ZP) career path at the Pay Band III-level and above.

II. Basis for Recognition of OPM Authorization in the APMS Plan

At NIST, research projects routinely require highly technical expertise in a particular scientific field. Depending on programmatic shifts in research, administrative priorities, and technological advances, at times, such projects continue for a short duration, while, at other times, such projects must continue for years before their successful completion. To address such programmatic shifts and changing priorities, NIST would benefit from the opportunity to hire individuals on a term appointment with a minimum duration of more than one year that may be extended up to six years and the ability to convert the individuals to a career or career-conditional appointment non-competitively. As research priorities shift with external changes, it is critical that NIST have the ability to align its human capital with the essential expertise required.

Title 5, CFR 316.301 (“Term employment / Purpose and duration”) allows agencies to make a term appointment for a period of one to four years where the need for an employee’s services is not permanent. This section also provides OPM with the authority to “authorize exceptions beyond the 4-year limit when the extension is clearly justified and is consistent with applicable statutory provisions.” The authority found in 5 CFR 316.301 does not adequately fulfill NIST’s research needs, as when changes in national research priorities occur, NIST must address them quickly and efficiently and manage human capital accordingly. To fulfill these needs, NIST is modifying its APMS to utilize a term appointment, with a minimum duration of more than one year that may be extended up to six years, for research positions in the Scientific and Engineering (ZP) career path at the Pay Band III-level and above, which includes the ability to convert individuals hired under this authority to a career or career-conditional appointment non-competitively. These term appointments will be subject to a trial period that lasts the duration of the term (initial appointment including any subsequent extensions).

III. Authorities and Waiver of Laws and Regulations Required

Public Law 99-574 gave NIST the authority to experiment with several specific personnel system innovations which are otherwise prohibited by law and regulations. NIST is waiving the following laws and regulations:

- 5 Code of Federal Regulations 316.301, Purpose and Duration
- 5 Code of Federal Regulations 316.304, Trial Period; when required (waived only for positions in the Scientific and Engineering Career path)
- 5 Code of Federal Regulations Part 322, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service (waived to the extent inconsistent with APMS).

IV. Language inserted into the APMS Plan

The APMS at NIST, published in the *Federal Register* on October 21, 1997 (62 FR 54604), is amended as follows:

After the section titled “Promotion,” a new section titled “Term Appointment for ZP Positions” will be inserted with the following:

Term Appointment for ZP Positions

NIST may hire individuals on term appointments with a minimum duration of more than one year that may be extended up to six years to research positions in the Scientific and Engineering (ZP) career path at the Pay Band III or above. These term appointments will be subject to a trial period that lasts the duration of the term (initial appointment including any subsequent extensions). NIST may also convert an employee serving under a term appointment under this authority to a permanent appointment in the competitive service without further competition if all of the following are met —

(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

(4) the employee's performance under such term appointment was at least Contributor level (Level 3) or equivalent; and

(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

Conversion to a permanent position is not guaranteed even if the above conditions are met.

Alicia Chambers,
NIST Executive Secretariat.